

18 August 1978

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MEMORANDUM FOR THE RECORD

SUBJECT: Title IV of H.R. 12240, the "Intelligence and Intelligence-Related Program Authorization Act for FY 79"

1. On 25 July 1978 Senate and House conferees met to consider H.R. 12240, the intelligence authorization bill.

2. H.R. 12240 caused some concern due to the presence of Title IV, "Admission of Certain Excludable Aliens" in the bill. Title IV focuses on the issue of the admission of aliens into the U.S. who are ineligible and excludable under paragraphs 212(a)(27), (28) or (29) of the Immigration and Nationality Act (8 U.S.C. 1182(a)). As proposed Title IV of the bill would require the Attorney General to notify the Intelligence Oversight and Judiciary Committees of the House and Senate whenever such an alien is, in the opinion of the Attorney General, excludable but nevertheless admitted. The Senate version of the bill, S. 2939, contained no comparable provision.

3. Title IV appears to have been the result of testimony by FBI officials who had complained that notwithstanding their professional recommendations to the contrary aliens considered by FBI to be excludable were being granted visas and entry into the U.S. FBI's complaint is directly linked to what is known as the "McGovern Amendment," an amendment to the Foreign Relations Authorization Act for fiscal year 1978 (22 U.S.C. 2691), subsequently adopted and currently law, which eliminated the Secretary of State's discretion with regard to recommending that an alien, otherwise excludable under 8 U.S.C. 1182(28)**, should be admitted and mandated the Secretary of State to act automatically in such cases making an immediate waiver recommendation to the Attorney General so that a visa might be issued.

**Paragraph 1182(a)(28) of Title 8 U.S.C. treats of aliens ineligible to receive visas because of political views or affiliations.

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4. In reporting on Title IV, the House Permanent Select Committee on Intelligence commented on the counterintelligence priorities of the nation as they relate to the visa process. The Committee went on to say the procedure contained in Title IV of H.R. 12240 might bring a more balanced perspective to the decision-making process regarding the admission of aliens into the U.S.

5. Shortly after Title IV surfaced in the House bill, it became apparent through the process of Executive Branch coordination that a rift between the State and Justice Departments was developing with regard to the underlying legal issues involved. It was subsequently learned that the issues involved are both long standing and highly charged. State and Justice were involved in an exchange of legal memoranda in an attempt to settle the legal issues which focused on the interpretation of relevant provisions in the Immigration and Nationality Act, *supra*, dealing with visa issuance and entry into the U.S. At a 22 June OMB-chaired meeting attended by representatives of OLC, State, Justice, FBI and IC Staff, it was decided that the DCI, exercising his Community role and underscoring the counterintelligence equities involved, should send a letter to Senator Bayh, Chairman SSCI, in opposition to Title IV.

6. On 10 July the DCI wrote to Senator Bayh expressing his appreciation for and underscoring the importance of HPSCI's efforts in Title IV to find a proper balance between an open policy with regard to the admission of aliens and fundamental national security interests but recommending that, in view of current consideration of the issues by the Special Coordination Committee for Counterintelligence (SCC/CI) under the NSC pursuant to the mandate contained in Section 1-304 of Executive Order 12036, enactment of Title IV and its statutory reporting requirement be reconsidered with a view to allowing the Executive Branch consultation process to complete its work. Justice and State concurred in the letter.

7. House-Senate conference on the bill was held on 25 July 1978. On 2 August, Representative Boland, Chairman, HPSCI, submitted the conference report to the House (attached). The conferees retained Title IV essentially as it was in H.R. 12240 before conference except that notification to the appropriate House and Senate committees of each case of an excludable alien being admitted was changed to a single report to be filed no later than 30 October 1979 regarding those cases which developed during the 1 October 1978-30 September 1979 period.

8. Conference Report language stressed the following matters with regard to Title IV:

--The conferees noted that the NSC is looking into the problems involved and underscored that, given the importance of foreign counterintelligence, it is their hope that "this legislation may stress the need to bring about a balanced perspective in the inter-agency decision-making process regarding the FBI's recommendations for visa denials."

--The conferees also expressed the notion that "the counterintelligence priorities of the nation may be askew," the operative effect of which may be to place a heavy burden on the FBI's foreign counterintelligence and foreign counterterrorism endeavors.

--The conferees limited the reporting requirement called for in Title IV as follows:

a. the report need not specifically identify individual names as such specificity is unnecessary and may be tantamount in some cases to disclosing sensitive information about intelligence sources and methods;

b. the report itself need only describe the circumstances of the case in general terms; and

c. the FBI need only notify the Attorney General of those cases in which the alien, admitted over FBI advice that such alien is excludable, "would be a legitimate target of FBI foreign counterintelligence or foreign counterterrorism intelligence concern."

9. While the Administration urged deletion of Title IV, the retention of the title--as amended at conference--causes no major difficulties since it merely establishes a one-time reporting requirement. Conference language provides sufficient protection for any intelligence sources and methods that may fall within the scope of the report, and limits the scope of the report by directing that only those cases where an alien would be a "legitimate target" of foreign counterintelligence or foreign counterterrorism intelligence need be reported.


10. Of related interest are the developments of late in the Senate with regard to S. 3075, the "International Security Assistance Act of 1978." On 26 July 1978, Senator Howard Baker (R., Tenn.) introduced an amendment to S. 3075 on the Senate floor which in effect would if enacted repeal the "McGovern Amendment." Citing the lack of good faith on the part of the Soviet Union in living up to the Helsinki Accords (Final Act of the

Conference on Security and Cooperation in Europe, signed at Helsinki on 1 August 1975) and the recent Shcharansky and Ginzburg trials in Moscow, Senator Jackson argued in support of the Baker amendment to S. 3075:

"As matters now stand, the Secretary [of State] is required to recommend that visas be granted, regardless of the circumstances of the visa request, the state of relations with the country involved, or other factors that any sensible and flexible policy would surely take into account. Nothing in the Helsinki Final Act dictates the internal deliberative procedures by which we decide whether or not to grant visas to enter the United States. In any event the blatant record of Soviet violations of the Helsinki Final Act does not argue for a totally undiscriminating policy on our part."
114 Cong. Rec. S 11816 (daily ed - July 26, 1978).

The Senate adopted Senator Baker's amendment on 26 July 1978.* However, on 15 August 1978 the Baker amendment was stricken in conference.

11. On 17 August 1978 the conference report on the bill passed^{AT} the House; it will next be referred to the Senate and brought up on the floor of that House for acceptance.


Assistant Legislative Counsel

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*114 Cong. Rec. S 11827 (daily ed. - July 26, 1978)

CONFERENCE REPORT ON H.R. 12240, INTELLIGENCE APPROPRIATIONS, 1979

Mr. BOLAND submitted the following conference report and statement on the bill (H.R. 12240) to authorize appropriations for fiscal year 1979 for intelligence and intelligence-related activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes:

CONFERENCE REPORT (H. REP. NO. 95-1420)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12240) to authorize appropriations for fiscal year 1979 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Intelligence and Intelligence-Related Activities Authorization Act for Fiscal Year 1979."

TITLE I--INTELLIGENCE ACTIVITIES

Sec. 101. (a) Funds are hereby authorized to be appropriated for fiscal year 1979 for the conduct of the intelligence and intelligence-related activities of the following departments, agencies, and other elements of the United States Government:

- (1) The Central Intelligence Agency and the Director of Central Intelligence.
- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Federal Bureau of Investigation.
- (10) The Drug Enforcement Administration.

(b) The classified annex to the joint explanatory statement prepared by the Committee of Conference to accompany the Conference Report on H.R. 12240 of the 95th Congress shall be deemed to reflect the final action of the Congress with respect to the authorization of appropriations for fiscal year 1979 for intelligence and intelligence-related activities of the United States Government, including specific amounts for activities specified in subsection (a). Copies of such annex shall be made available to the Committees on Appropriations of the House of Representatives and the Senate and to the appropriate elements of the United States Government for which funds are authorized by this Act under subsection (a).

(c) Nothing contained in this Act shall be deemed to constitute authority for the conduct of any intelligence activity which is prohibited by the Constitution or laws of the United States.

TITLE II--INTELLIGENCE COMMUNITY STAFF

Sec. 201. (a) There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1979 the sum of \$12,700,000 to provide the support necessary to permit the Director of Central Intelligence to fulfill his responsibility for directing the substantive functions and managing the resources for intelligence activities.

(b) For fiscal year 1979 the Intelligence Community Staff is authorized an end strength ceiling of two hundred and sixty-nine full-time employees. Such personnel may be permanent employees or employees on detail from other elements of the United States Government so long as they are properly counted within the ceiling and there is a mix of positions to allow appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities. Any employee who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that an employee may be detailed on a non-reimbursable basis for a period of less than one year for performance of temporary functions as required by the Director of Central Intelligence.

(c) Except as provided in subsection (b) and until otherwise provided by law, the activities of the Intelligence Community Staff shall be governed by the Director of Central Intelligence in accordance with the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-403j).

TITLE III--CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability System for the fiscal year 1979 the sum of \$43,600,000.

TITLE IV--ADMISSION OF CERTAIN EXCLUDABLE ALIENS

Sec. 401: By October 30, 1979, the Attorney General shall report to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate regarding those cases during the period beginning on October 1, 1978 and ending on September 30, 1979 in which (1) the Director of the Federal Bureau of Investigation has notified the Attorney General that the Director knows or has reason to believe that an alien applying for admission into the United States is an excludable alien under the terms of Section 212(a) (27), (28), or (29) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), and (2) such alien is subsequently admitted into the United States.

And the Senate agree to the same.

EDWARD P. BOLAND,
BILL D. BURLISON,
NORMAN Y. MINETA,
J. K. ROBINSON,

For consideration of differences with the Senate on intelligence-related activities:

MELVIN PRICE,
RICHARD H. ICHORD,
BOB WILSON,
Managers on the Part of the House.

BIRCH BAYH,
WILLIAM D. HATHAWAY,
GARY W. HART,
DANIEL K. INOUE,
BARRY GOLDWATER,
CHARLES MCC. MATHIAS, JR.,
MALCOLM WALLOP,
HARRY P. BYRD, JR.,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12240) to authorize appropriations for fiscal year 1979 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff,

the Central Intelligence Agency Retirement and Disability System, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I--INTELLIGENCE ACTIVITIES

Details of the conferees' recommendations with respect to the amounts to be authorized for appropriations for intelligence and intelligence-related activities covered under this title for fiscal year 1979 are contained in a classified annex to this statement.

In view of the differences in committee jurisdiction between the two Houses over intelligence-related activities, the differences in IRA programs between the House and Senate were discussed in a special conference group. On the Senate side the group was composed of Senators Hart and Goldwater, who are members of both the Select Committee on Intelligence and the Committee on Armed Services, and Senator Byrd of Virginia, who is Chairman of the Intelligence Subcommittee of the Committee on Armed Services. On the House side, the IRA conference group was composed of Congressmen Boland, Burlison, Robinson and Mineta of the House Permanent Select Committee on Intelligence and Congressmen Price and Ichord of the House Armed Services Committee and Congressman Bob Wilson who is a member of both committees.

The amounts listed for intelligence-related activities represent the funding levels agreed to by the IRA conferees for those programs subject to annual authorization and contained in the Department of Defense Authorization bill. In addition, certain amounts have been agreed to which fall into the appropriation categories of Operations and Maintenance and Other Procurement. The House and Senate IRA conferees agree on the level of funding for IRA programs, as listed in this statement of managers. The Senate Armed Services conferees, however, note that Operations and Maintenance and Other Procurement items are not normally authorized on an annual basis in the Senate, but rather are included in the military appropriations bills. The Senate conferees intend to give further consideration during the coming year to the question of the scope of intelligence authorization in order that these asymmetries between the House and Senate be reduced.

TITLE II--INTELLIGENCE COMMUNITY STAFF

CONFERENCE ACTIONS--FISCAL YEAR 1979

(In millions)

Project	Fiscal year 1979 amended request	House action	Senate action	Conference
Personnel	\$9.0	-\$1.4	+\$0.5	\$8.2
External contracts	4.5	-\$1.2	-\$1.5	3.0
IRA subject to conference	1.5			1.5
Total	15.0	-2.6	-1.0	12.7

For fiscal year 1979, a request of \$9.2 million and 170 manpower spaces was submitted for authorization. This submission was subsequently amended by an OMB letter on April 23, 1978, to reflect a funding request of \$15.0 million and 282 manpower spaces.

The House authorized an amount of \$12.4 million and 241 positions in fiscal year 1979 for the Intelligence Community Staff. The Senate authorized \$14.0 million and 298 positions in fiscal year 1979. Conferees agreed to a compromise which provides an authorized sum of \$12.7 million and an end strength of 269 full-time employees. Such personnel may be permanent employees or employees on detail from other elements of the U.S. Government so long as they are properly counted within the ceiling and there is a mix of positions to allow appropriate representation from elements of the U.S. Government engaged in intelligence and intelligence-related activities. Any employee who is detailed to the Intelligence Community Staff from another element of the U.S. Government shall be detailed on a reimbursable basis, except that an employee may be detailed on a non-reimbursable basis for a period of less than 1 year for performance of temporary functions as required by the Director of Central Intelligence.

The funds and personnel authorized will provide the support necessary to permit the Director of Central Intelligence, under the new reorganization, to fulfill his responsibilities for directing the substantive functions and managing the resources for intelligence activities.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

There was no conference action required for title III as both House and Senate authorized the budget request for \$43,500,000.

TITLE IV—ADMISSION OF CERTAIN EXCLUDABLE ALIENS

The House bill contained a requirement that, during fiscal year 1979, the Attorney General shall notify the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives, and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate of each admission of an alien which the Attorney General has reason to believe is excludable under certain provisions of the Immigration and Nationality Act (title 8, United States Code).

The Senate bill contained no provision with respect to the admission of certain excludable aliens.

The conference substitute is essentially the same as the House bill, except that the Attorney General is required to submit a one-time report by October 30, 1979, describing those cases during fiscal year 1979 in which the Director of the Federal Bureau of Investigation has notified the Attorney General that the Director has reason to believe an alien is excludable under certain provisions of the Immigration and Nationality Act and that alien is subsequently admitted into the United States.

It is the intent of the conferees that the report need not specify individual names and that the term "report" describing those cases means a report generally describing the circumstances. The conferees agree that the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence would have the authority, under their respective authorizing resolutions, to obtain such individual names. However, the conferees recognize that such identification may in some cases disclose sensitive information about intelligence sources and methods, and that such identification is unnecessary in the report of the Attorney General required by this legislation. Further,

the conferees intend that the FBI should notify the Attorney General only in cases where an alien would be a legitimate target of FBI foreign counterintelligence or foreign counterterrorism intelligence concern.

The statutory requirement for a report of the Attorney General is not intended to substitute for, or supercede, the authority of the Intelligence Committees to request and receive information under their respective authorizing resolutions. The purpose of requiring such a report by statute is to express the shared concern of the conferees that the U.S. Government may regularly be admitting excludable aliens contrary to the best advice available in the government concerning counterintelligence. The conferees are concerned that the counterintelligence priorities of the nation may be askew, and the FBI's foreign counterintelligence and foreign counterterrorism intelligence burdens may thus be unnecessarily heavy.

The conferees note that the National Security Council is taking positive action to assure that the intelligence agencies of the United States Government and the Departments of State and Justice work together to protect the United States from hostile foreign intelligence and foreign terrorist activities. The conferees attach great importance to foreign counterintelligence and this provision is a reflection of that concern. There is no intent of minimizing the very difficult policy questions that counterintelligence problems pose. It is all the more necessary, therefore, to have a closely coordinated effort on the part of all the government agencies involved. The conferees hope that this legislation may stress the need to bring about a balanced perspective in the interagency decision-making process regarding the FBI's recommendations for visa denials.

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HARRY F. BYRD, JR.,
Managers on the Part of the Senate.

Mr. BOLAND. Mr. Speaker, at the same time I submit the above conference report, I wish to call to the attention of the Members of the House that the classified annex which accompanies the conference report will be made available to all Members in the committee room of the House permanent Select Committee on Intelligence until the conference report is considered by the House.

Mr. BOLAND. Mr. Speaker, at the same time I submit the above conference report, I wish to call to the attention of the Members of the House that the classified annex which accompanies the conference report will be made available to all Members in the committee room of the House permanent Select Committee on Intelligence until the conference report is considered by the House.

BUREAU OF LAND MANAGEMENT AUTHORIZATION

Mr. RONCALIO. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 10787) to authorize appropriations for activities and programs carried out by the Secretary of the Interior through the Bureau of Land Management, with a Senate amendment thereto, and concur in the

Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert: That pursuant to section 318(b) of the Federal Land Policy and Management Act of 1976 (31 U.S.C. 1301 note), there are hereby authorized to be appropriated the following sums for activities and programs administered through the Bureau of Land Management:

(a) for management of lands and resources, excluding emergency firefighting and rehabilitation: \$312,100,000 for fiscal year 1979, \$329,300,000 for fiscal year 1980, \$361,300,000 for fiscal year 1981, and \$393,300,000 for fiscal year 1982;

(b) for land acquisition, construction, and maintenance: \$22,600,000 for fiscal year 1979, \$22,000,000 for fiscal year 1980, \$25,000,000 for fiscal year 1981, and \$27,000,000 for fiscal year 1982;

(c) for implementation of the Act of October 20, 1976 (31 U.S.C. 1601): \$105,000,000 and such additional sums as are necessary for payments for fiscal year 1979, \$108,000,000 and such additional sums as are necessary for payments for fiscal year 1980, \$111,000,000 and such additional sums as are necessary for payments for fiscal year 1981, and \$114,000,000 and such additional sums as are necessary for payments for fiscal year 1982;

(d) for implementation of section 317(o) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1747): \$40,000,000 for loans for fiscal year 1979, \$50,000,000 for loans for fiscal year 1980, \$57,000,000 for loans for fiscal year 1981, and \$65,000,000 for loans for fiscal year 1982; and

(e) such additional or supplemental amounts as may be necessary for increases in salary, pay, retirements and other employee benefits authorized by law, and for other nondiscretionary costs.

(f) Paragraph (c) of section 317 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 2771; 43 U.S.C. 1747) is amended to read as follows:

"(c)(1) The Secretary is authorized to make loans to States and their political subdivisions in order to relieve social or economic impacts occasioned by the development of minerals leased in such States pursuant to the Act of February 25, 1920, as amended. Such loans shall be confined to the uses specified for the 50 per centum of mineral leasing revenues to be received by such States and subdivisions pursuant to section 35 of such Act.

"(2) The total amount of loans outstanding pursuant to this subsection for any State and political subdivisions thereof in any year shall be not more than the anticipated minimal leasing revenues to be received by the State pursuant to section 35 of the Act of February 25, 1920, as amended, for the ten years following.

"(3) The Secretary, after consultation with the Governors of the affected States, shall allocate such loans among the States and their political subdivisions in a fair and equitable manner, giving priority to those States and subdivisions suffering the most severe impacts.

"(4) Loans made pursuant to this subsection shall be subject to such terms and conditions as the Secretary determines necessary to assure the achievement of the purpose of this subsection. The Secretary shall promulgate such regulations as may be necessary to carry out the provisions of this subsection no later than three months after the enactment of this paragraph.

"(5) Loans made pursuant to this subsection shall bear interest equivalent to the lowest interest rate paid on an issue of at least \$1,000,000 of tax exempt bonds of such State or any agency thereof within the preceding calendar year.